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16 Attorneys for Plaintiff Shirley Zelman, Trustee,
17 f/b/o Shirley Zelman Living Trust

18 IN THE UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21 SHIRLEY ZELMAN, TRUSTEE F/B/O SHIRLEY
22 ZELMAN LIVING TRUST, on behalf of plaintiff
23 and all others similarly situated,

24 Plaintiff,

25 v.

26 JDS UNIPHASE CORPORATION, JOZEF
27 STRAUS, KEVIN KALKHOVEN, ANTHONY R.
28 MULLER and CHARLES ABBE,

Defendants.

Master File No.: C-02-4656 CW (EDL)

CLASS ACTION

**PLAINTIFFS' REQUEST FOR
DISMISSAL AND ~~[PROPOSED]~~ ORDER
DISMISSING DEFENDANT KEVIN
KALKHOVEN WITH PREJUDICE**

1 Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, plaintiffs hereby
2 request dismissal with prejudice of defendant Kevin Kalkhoven from the above-captioned
3 action.

4 On July 14, 2005 the Court issued an order granting in part and denying in part Mr.
5 Kalkhoven's motion to dismiss plaintiffs' complaint. Mr. Kalkhoven was named as a
6 defendant to the Amended Complaint (the "Complaint") in this matter. Discovery in this
7 matter has been proceeding for 10 months, and is now substantially concluded. Mr. Kalkhoven
8 gave deposition testimony in this matter on November 21 and 22, 2006. Having assessed the
9 record following discovery, plaintiffs have determined that there is an insufficient factual basis
10 to support their remaining claims against Mr. Kalkhoven. To conserve resources of both the
11 Court and the parties, plaintiffs accordingly request dismissal of Mr. Kalkhoven from this
12 action, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2).

13 Plaintiffs and Mr. Kalkhoven have agreed that each side shall bear its own costs, fees
14 and expenses. Plaintiffs and Mr. Kalkhoven have also agreed to waive any other claims they
15 might have had for malicious prosecution or for sanctions under Rule 11 of the Federal Rules
16 of Civil Procedure or the Private Securities Litigation Reform Act. Neither plaintiffs nor their
17 attorneys have received or will receive any consideration in exchange for this dismissal Mr.
18 Kalkhoven as a defendant to this action, and this litigation will proceed against the other
19 defendants.

20 This action has been certified as a class action pursuant to Rule 23 of the Federal Rules
21 of Civil Procedure, and notice of the pendency of this action was published on or about
22 February 20, 2006. Court approval of this dismissal is required under Rules 23(e) and 41(a)(2)
23 of the Federal Rules of Civil Procedure. No notice of this dismissal is required at this time, but
24 Plaintiffs shall describe Mr. Kalkhoven's dismissal with prejudice in the next notice published
25 and provided to the class, which presumably will occur at the time of the settlement or
26 resolution of this action as to all defendants. Should this litigation be terminated by settlement,
27 any release granted to the remaining defendants shall be broad enough to cover Mr. Kalkhoven
28 and his spouse, heirs, affiliates, assigns, etc., to the same extent as the release covers the

1 settling defendants.

2 Pursuant to plaintiffs' request, and good cause appearing therefor, it is hereby
3 ORDERED that defendant Kevin Kalkhoven be DISMISSED WITH PREJUDICE on the
4 foregoing terms.

January 3, 2007

5 DATED: December 26, 2006

By

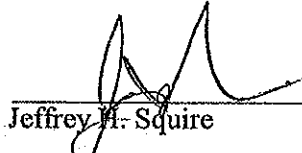


Honorable CLAUDIA WILKEN
United States District Judge

9 Submitted by:

10 DATED: December 26, 2006

By


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--and--

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